

'Bad' science still rampant in US justice system

4 January 2011, by Kerry Sheridan

The story of an American man cleared of a rape and robbery conviction by DNA evidence after spending 30 years in jail made headlines across the world on Tuesday.

But despite advances in [science](#) and technology, such exonerations are rare, and experts say the US [criminal justice system](#) remains riddled with problems that arise from outdated practices and, quite simply, bad science.

Perhaps the worst offender is the police lineup. Research shows that 75 percent of all wrongful convictions that are later cleared by [DNA evidence](#) start with eyewitness mistakes.

That was the case for Cornelius Dupree, who was fingered in 1979 by a rape victim who incorrectly picked him out of a photo array.

Texas District Judge Don Adams on Tuesday declared Dupree, 51, "free to go" after serving more than 30 years behind bars.

"Cornelius Dupree spent the prime of his life behind bars because of mistaken identification that probably would have been avoided if the best practices now used in Dallas had been employed," said attorney Barry Scheck.

Scheck, who rose to fame as a defense lawyer on the team that won American football star OJ Simpson's acquittal for murder in 1995, now heads the Innocence Project, which is leading the charge for reform of the science side of the criminal justice system.

Changing the way photo lineups are done is key, because memory is flawed and witnesses are prone to subtle suggestion by police who want to catch a criminal, according to University of Virginia School of Law professor Brandon Garrett.

"There have now been thousands of studies with

incredibly consistent results all showing that suggestion has this outsized powerful effect on eyewitness memory," Garrett said.

"Even if police are trying their best not to signal anything, the eyewitness -- who may be a victim of a crime and hesitant about participating -- may be looking to the police officer for reassurance and for cues and may perceive things that weren't even intended."

Garrett estimated that hundreds of police departments have begun to change the way they conduct lineups, for instance by having an officer who is not involved in the case supervise, and by informing the witness that the suspect may not be in the lineup at all.

But in a country where tens of thousands of cases each year rely on eyewitness testimony for convictions, the scale of reform is falling far short.

The same holds true for other old-fashioned police methods that remain in practice even though modern day science has disproved their reliability.

"I actually divide forensic science into two big camps," said Michael Saks, law professor at Arizona State University. "There is the camp that is using real science that is borrowed from basic science, such as chemistry and DNA.

"On the other hand you have got the kind of -- well, my kindest word for it is almost-science or wannabe science, and that includes handwriting, fingerprints, fire and arson investigation and forensic dentistry."

Arson science in particular has made waves lately in the criminal justice community, as Scheck and other legal experts have attempted to use the case of an executed Texas man to showcase flaws in the death penalty.

Several fire science experts reviewed evidence in

the case of Cameron Todd Willingham, who was put to death in 2004 for setting the house blaze that killed his three small daughters. The experts found no proof of arson.

However, attempts to get the Texas governor to acknowledge mistakes may have been made, as well as a recent bid to have a Houston judge rule on whether the death penalty is unconstitutional because it leads to wrongful convictions, have been shut down by local authorities and courts.

In all, just 266 people, a majority of them African-Americans, have been exonerated by DNA evidence since 1989, according to the Innocence Project.

"The number of people that are exonerated that we know about are tiny," said University of Michigan professor Samuel Gross, adding that when crime evidence goes beyond the bounds of DNA, convictions become even harder to overturn.

"The problem with arson cases is that if the defendant wasn't guilty it is not because someone else did it, it is because there was no crime and that is a hard thing to prove in a lot of cases," he said.

And even when a bulk of evidence exists, pure science is rarely enough, according to Gail Jaspen, chief deputy director of Virginia Department of Forensics.

"Evidence by itself doesn't prove somebody's innocence," said Jaspen. "Because the (forensic science) department doesn't have the ability to exonerate anybody. Only the court or the governor does."

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